

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1858.—Submitted, and ordered to be printed.

Mr. BAYARD made the following

R E P O R T .

The Committee on the Judiciary, to whom was referred the protest against the election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright as senators in Congress from the State of Indiana, report:

The committee find that the protests against the election of the Hon. Graham N. Fitch as a senator in Congress from the State of Indiana were referred to the Committee on the Judiciary on the 10th of February, 1857, and on the 26th of the same month a resolution was reported by the committee authorizing testimony to be taken both by the protestants and the sitting member. The resolution not being acted upon by the Senate at that session, from the pressure of other business, the protests were again referred to the committee on the 9th of March last, at the special session of the Senate, and the same resolution, with a slight amendment, reported by the committee on the 13th of the same month, which being taken up on the day it was reported, a debate ensued upon an amendment offered by the Hon. Mr. Trumbull, of Illinois, and the Senate having on the previous day resolved to adjourn "*sine die*" on the 14th of March, at 1 o'clock, the resolution reported by the committee was ordered to lie on the table.

The protests against the election of the Hon. Jesse D. Bright, as well as against the election of the Hon. Graham N. Fitch, having been referred at the present session, and the objections of the protestants and allegations of the sitting members being identical in both cases, the committee have adopted and recommend the passage of the resolution reported to the Senate by the committee at the special session on the 13th day of March last, with such variation as is requisite to make it apply to the cases of both the sitting members, as follows:

Resolved, That in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, senators returned and admitted to their seats from the State of Indiana, the sitting members, and all persons protesting against their election, or any of them, by themselves, or their agents or attorneys, be permitted to

take testimony on the allegations of the protestants and the sitting members touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1858.—Ordered to be printed.

Mr. TRUMBULL submitted the following

VIEWS OF THE MINORITY

OF THE

Committee on the Judiciary, to whom were referred the protests against the right of Graham N. Fitch and Jesse D. Bright to seats as senators from the State of Indiana.

The legislature of Indiana, called the general assembly, is composed of a senate of fifty members, and a house of representatives of one hundred members, and two-thirds of each house is, by the constitution, required to constitute a quorum thereof. Each house is declared to be judge of the election and qualification of its members, and required to keep a journal of its proceedings. No regulation exists by law in Indiana as to the manner in which members of the State senate are to be inducted into office. No law or regulation is there existing providing the time, place, or manner of electing United States senators.

It appears by the journal of the senate of Indiana, that on the opening of the senate at the meeting of the legislature, January 8, 1857, forty-nine of the senators were present, and that all the newly elected members were duly sworn, took their seats, and continued thereafter to act with the other senators till the close of the session. The only absentee senator took his seat January 13, 1857. Protests were filed contesting the seats of three of the newly elected members, which were afterwards examined and considered by the senate, and they were each found and declared to be entitled to seats, respectively, by majorities more or less numerous, all which is entered upon and appears by the journal of said senate.

The State constitution makes it the duty of the speaker of the house of representatives to open and publish the votes for governor and lieutenant governor in the presence of both houses of the general assembly. No provision exists by the constitution making such meeting or presence of the two houses a convention, or providing any officers therefor, or authorizing or empowering the same to transact any business whatever, except by joint vote forthwith to proceed to elect a governor or lieutenant governor in case of a tie vote.

Both houses being in session, the speaker notified them that he should proceed to open and publish the votes for governor and lieutenant governor, on Monday the 12th day of January, at 2½ o'clock p. m., in the hall of the house. Shortly before the hour arrived the president of the senate announced that he would proceed immediately to the hall of the house of representatives; and thereupon, together with such senators as choose to go, being a minority of the whole number thereof, he repaired to the hall of the house of representatives, and there, in their presence, and in the presence of the members of the house, the votes for governor and lieutenant governor were duly counted and published by the speaker, and A. P. Willard, the then president of the senate, was declared duly elected governor, and A. A. Hammon lieutenant governor, of said State.

At the close of this business, a senator present, without any vote for that purpose, declared the meeting (by him then called a convention) adjourned to the 2d day of February, 1857, at two o'clock.

The senate hearing of this proceeding, on the 29th day of January, 1857, as appears by its journal, passed a resolution protesting against the proceedings of said so-called convention, disclaiming all connexion therewith or recognizance thereof, and protesting against any election of United States senators or any other officer thereby. On the 2d of February, 1857, the president of the senate, with a minority of its members, again attended in the hall of the house, and without proceeding to any business, and without any vote, declared the meeting (by him called a convention) adjourned until the 4th day of February, 1857, at which time the president of the senate, with twenty-four of its members, went to the hall of the house of representatives, and there they, together with sixty-two members of the house, proceeded to elect two senators of the United States, to wit: Graham N. Fitch and Jesse D. Bright, they each receiving eighty-three votes, and no more, at their respective elections, twenty-three of which votes were by members of the senate.

Against these elections so made, protests by twenty-seven members of the senate of Indiana and thirty-five members of the house of representatives of said State have been duly presented, alleging that, in the absence of any law, joint resolution, or regulation of any kind by the two houses composing the legislature of Indiana providing for holding a joint convention, it is not competent for a minority of the members of the Senate, and a majority but less than a quorum of the members of the house of representatives of said state, to assemble together and make an election of United States senators.

Of the facts as herein stated there is no dispute, as we understand.

It is now alleged by the sitting senators, respectively, as we understand the substance of their allegations, in contradiction of the Senate Journal, that the three State senators whose seats were contested were not legally elected and qualified; that they were without the expressly required credentials, the certificate of the proper and only returning officer, and that they were, notwithstanding, directed to be sworn in by a presiding officer chosen for the purpose by the members of the senate designated as republicans, for the clear purpose, illegal

and fraudulent, in fact, of defeating an election of senators of the United States.

Under these circumstances, we object to the adoption of the resolution for the taking of testimony to sustain these allegations, because the said election of United States senators, so conducted, is obviously illegal and insufficient, and cannot be cured by any proof of these allegations; and we insist that the Senate should now proceed to a definitive decision of the question.

J. COLLAMER,
L. TRUMBULL.

